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ECONOMIC AND ENVIRONMENTAL QUESTIONS: REPORT OF SUBSIDIARY BODIES, CONFERENCES AND RELATED QUESTIONS: CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

Implementation of the Charter of Economic Rights and Duties of States

Report of the Secretary-General

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I. INTRODUCTION

1. The General Assembly, in its resolution 44/170 of 19 December 1989, requested the Secretary-General to submit to the Assembly at its forty-ninth session an analytical report on the progress achieved in compliance with the Charter of Economic Rights and Duties of States and its impact on the solution of the main economic problems confronting the developing countries and the reactivation of their economic growth and development.

2. The Secretary-General, in order to facilitate the elaboration of the report, asked all Member States to provide relevant information regarding specific legal and economic regulations as well as national programmes adopted in order to implement the provisions of the Charter of Economic Rights and Duties of States.

II. BACKGROUND

A. Legislative background

3. The Charter of Economic Rights and Duties of States, adopted by the General Assembly in its resolution 3281 (XXIX) of 12 December 1974, stipulates, in article 34, that the General Assembly will undertake a systematic and comprehensive review of the implementation of the Charter every five years.

4. These reviews are intended to consider the progress achieved and improvements required, taking into account the evolution of all the economic, social, legal and other factors related to the principles upon which the Charter is based. The General Assembly, in its resolution 44/170, referring to the latest review, called upon all Member States to take concrete steps to implement the provisions of the Charter and reaffirmed the right of every State to adopt, without external interference, the economic and social system that it deems most appropriate for its own development. The Secretary-General was requested to submit to the General Assembly at its forty-ninth session an analytical report on the progress achieved in compliance with the Charter of Economic Rights and Duties of States.

B. Previous reviews

5. Since the adoption of the Charter of Economic Rights and Duties of States in 1974, there have been several review exercises for which the Secretary-General prepared reports. At the thirty-ninth session of the General Assembly, on the occasion of the tenth anniversary of the adoption of the Charter, the Assembly carried out a comprehensive review of the implementation of the Charter. The Secretary-General submitted a report (A/39/332 and Add.1) to assist the Assembly in its review.

6. The consideration of the issue at the thirty-ninth session of the General Assembly resulted in the establishment of an Ad Hoc Committee of the Whole to Review the Implementation of the Charter of Economic Rights and Duties of

States. The Ad Hoc Committee presented its report to the General Assembly at its fortieth session, in 1985. 1/ The report contained no agreed conclusions.

7. The Secretary-General submitted a further report relating to the review of the implementation of the Charter of Economic Rights and Duties of States to the forty-fourth session of the General Assembly (A/44/266-E/1989/65 and Add.1 and 2). The Secretary-General stated, in the report:

> "The conclusion of this report, as well as those of previous reports of the Secretary-General, is that the Charter remains unimplemented. However, in contrast to the situation four years ago, when the last review of implementation was carried out, there are today grounds for cautious optimism.
>
> "With regard to certain articles of the Charter, there have been positive developments in the direction of implementation. Moreover, the easing of international tensions has created a climate in which further progress can be foreseen. Specifically, there has been a renewal of interest in multilateral approaches and a welcome, if belated, recognition of the usefulness and indispensability of the United Nations" (A/44/266-E/1989/65, paras. 33 and 34).

III. REVIEW OF THE STATE OF IMPLEMENTATION OF THE CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

A. General considerations

8. The overriding purpose of the Charter is to codify certain principles that will facilitate the achievement of shared objectives. By its very nature, implementation of the Charter is difficult to define, let alone measure, with precision. Many of the articles of the Charter are statements of general objectives. Evaluations as to the extent to which the Charter has been implemented must inevitably also be cast in general terms. It is also no derogation of the significance of the Charter to state that, if it were to be drafted today, some of its specific provisions would undoubtedly be somewhat different. The true significance of the Charter lies not so much in its precise formulations as in its intent and overall conception. From this perspective, the Charter can be seen to have been remarkably prescient. The proper functioning of an increasingly interdependent and integrated world economy requires generally accepted norms and principles.

9. The Charter seeks to establish generally accepted principles and norms which govern international economic relations. These are based on equity, sovereignty, equality, interdependence, common interest and cooperation among all States, irrespective of their economic and social system. The scope of the Charter is thus extremely broad and its implications potentially far-reaching.

10. The Charter is part of an effort, initiated by developing countries, to restructure international economic relations on the basis of agreed rules and principles. As was noted in a report on legal aspects of international economic relations prepared for the General Assembly in 1984 (A/39/504/Add.1), the

measures are either of an economic-legal content, such as the integrated commodity programme, the generalized preference system, the fixing of targets for public aid, the code of conduct for multinationals and the transfer of technology, or of a political-legal nature aiming at strengthening the weight of less developed countries in the international economic system, such as the reaffirmation and extension of the principle of permanent sovereignty over natural wealth and resources and the claim for full and effective participation in international economic decision-making, etc.

11. Some of the legal principles and norms of the Charter, as the orientation for the legal underpinning of the envisaged new international economic system, made the Charter controversial. The Charter, following a lengthy debate, was adopted on a divided vote. As previous reviews indicate, the Charter continues to arouse controversy, although a large part of it is generally acceptable and does not generate any particular contention. Those articles of the Charter which seek to establish innovative legal principles have been and continue to be the main object of controversy.

12. The elaboration of rules and principles adequate to the specific existing circumstances is a long and difficult process. This process is usually piecemeal and is hence a cumulative process in which new law emerges from practice, precedents, negotiations and pronouncements that are frequently registered in instruments of ambiguous legal nature, in the sense that they do not by themselves confer on their content the quality of law. The creation of generally accepted norms and principles is by its very nature an incremental process in which the United Nations plays an important role.

B. Achieving rational and equitable international economic relations

13. The multilateral framework of the United Nations system provides an important basis for the gradual implementation and adaptation of the basic norms and principles enunciated in the Charter. In article 17, the Charter specifies that international cooperation for development is the shared goal and common duty of all States. Recent years have witnessed the adoption of important instruments relating to international economic cooperation. Such global undertakings as the Declaration on International Economic Cooperation, in particular the Revitalization of Economic Growth and Development of Developing Countries; the International Development Strategy for the Fourth United Nations Development Decade; the United Nations New Agenda for African Development in the 1990s, the Cartagena Commitment; the Rio Declaration on Environment and Development and Agenda 21; and the envisaged elaboration of a New Agenda for Development are ample proof for this trend. In numerous areas covered by these documents, where agreement had proven elusive in the past, consensus is beginning to emerge as to the nature of the problems and the type of international response that is most appropriate.

14. The Declaration on International Economic Cooperation, in particular the Revitalization of Economic Growth and Development of the Developing Countries was adopted by consensus at the eighteenth special session of the General Assembly on 1 May 1990 (resolution S-18/3, annex). It defined the challenges

and opportunities for the 1990s and agreed on specific commitments and policies for international development cooperation for the reactivation of economic growth and development in developing countries. The Declaration accepted that while sound national economic policies are essential, they need a supportive international economic environment.

15. The International Development Strategy for the Fourth United Nations Development Decade, adopted by the General Assembly on 21 December 1990 (resolution 45/199, annex), complements the Declaration. The International Development Strategy lays down as its basic objectives a surge in economic growth in developing countries; a development process responsive to social needs, such as poverty reduction and human resources development; an improvement of the international systems of trade, money and finance to support the development process; and a decisive strengthening of international development cooperation. It defines policies to achieve the stated objectives in such areas as economic policy frameworks, external debt, development finance, international trade and commodities, industrial and agricultural policies and science and technology. The International Development Strategy further elaborates priority aspects of development, such as eradication of poverty, human resources and institutional development, as well as population and environment.

16. The successful realization of the commitments and policies agreed upon and elaborated in the Declaration and the International Development Strategy will certainly contribute to the implementation of the basic norms enshrined in the Charter of Economic Rights and Duties of States. Sustained efforts will be required to overcome existing obstacles to the process of effective development cooperation, as stated in the most recent progress reports of the Secretary-General regarding the state of implementation of the Declaration and the International Development Strategy (A/47/397 and A/47/270-E/1992/74).

17. The United Nations Conference on Environment and Development, held at Rio de Janeiro, Brazil, in June 1992, devised integrative strategies that are intended to halt and reverse the negative impact of human behaviour on the physical environment and promote environmentally sustainable economic development in all countries. The agreements finalized and adopted at the Conference include: Agenda 21 (a programme of action for sustainable development); the Rio Declaration on Environment and Development; and the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests. 2/ Implementation of these agreements will contribute to several objectives of the Charter on Economic Rights and Duties, especially that for "contributing to the creation of conditions for ... the protection, preservation and enhancement of the environment".

18. In order to monitor the implementation of Agenda 21 and related agreements, the Commission for Sustainable Development was established by the Economic and Social Council in accordance with General Assembly resolution 47/191 of 22 December 1992. It has adopted a multi-year programme of work in order to review the 40 chapters of Agenda 21 individually and the implementation of Agenda 21 as a whole in 1997. A High-level Advisory Board on Sustainable Development was also established. To ensure effective programme coordination

within the United Nations system, an Inter-Agency Committee on Sustainable Development was created.

19. Related processes include the 1992 United Nations Framework Convention on Climate Change, the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, the advanced stage of negotiations reached in the draft international convention to combat desertification in those countries experiencing serious droughts and/or desertification, particularly in Africa, which is expected to be agreed to by June 1994.

20. Taken together, these processes reflected and strengthened the desire of the international community to use the multilateral approach in dealing with global and regional environmental problems. With respect to the Charter, the process implicitly recognizes article 7, contributes to implementing article 11, respects articles 24 and 25, and was a major step in implementing article 30.

21. For many years, Africa has been in an economic crisis with serious political, social and environmental ramifications. The crisis has evoked international response by the United Nations system with a view to establishing more equitable international economic relations. A five-year programme - the United Nations Programme of Action for African Economic Recovery and Development 1986-1990 - was adopted by the General Assembly on 1 June 1986 (resolution S-13/2, annex). African economic recovery and development was made a priority activity of the United Nations. In furthering these efforts, the final review and appraisal of the Programme of Action, undertaken in September 1991, led to the adoption by the General Assembly on 18 December 1991 of the United Nations New Agenda for the Development of Africa in the 1990s (resolution 46/151, annex, sect. II). It embodies mutually reinforcing responsibilities and commitments by Africa and the international community to foster the continent's economic recovery and development.

22. The United Nations system will play a major role in the implementation of the New Agenda. Its various organizations and specialized agencies are requested to devise specific programmes for Africa that are consistent with the elements of the New Agenda and devote adequate resources to their implementation. The New Agenda established a follow-up, monitoring and evaluation machinery and provided for a mid-term and final review and assessment of the implementation in 1996 and 2000, respectively.

23. Recent developments in the world trade system are also evidence of further efforts to reshape the international economic system in accordance with the imperatives of growing interdependence in the world economy. The most significant recent development has been the successful completion of the Uruguay Round of multilateral trade negotiations. The conclusion of the Round represents a major achievement in multilateral policy coordination. The agreements made under it seek to strengthen an open and non-discriminatory multilateral trading system which will enable all countries to improve the standard of living of their populations through sustained economic development. Estimates by the secretariat of the General Agreement on Tariffs and Trade (GATT) suggest that as a result of trade liberalizations undertaken under the Uruguay Round, the level of world merchandise trade might be about 12 per cent higher in the year 2005 than it would otherwise have been. 3/ The largest

increases in trade are projected to occur in clothing; textiles; agricultural, forestry and fishery products; and processed food and beverages, which are areas of export interest to many developing countries.

24. In the Charter of Economic Rights and Duties of States the importance of adequate and stable commodity-related export earnings for developing countries was stressed. However, international arrangements, such as the commodity agreements, have proved largely ineffective in preventing a sharp fall in commodity prices over the past decade, which has led to a large loss of real income for many developing countries. In real terms, non-fuel commodity prices have fallen by about 50 per cent over the period from 1980 to 1993.

25. In the Cartagena Commitment, 4/ which was adopted by the United Nations Conference on Trade and Development at its eighth session, Governments urged producers and consumers of individual commodities to examine ways and means of reinforcing and improving their cooperation in order to contribute to the solution of problems in the area of commodities, taking into account the particular characteristics and situation of each individual commodity.

26. It is clear, however, that diversification is the long-term solution to the problems of commodity producers. Such diversification efforts by developing countries require support from the international community, in particular through the removal of obstacles to their exports.

27. Articles 18 and 19 of the Charter deal with the issues relating to the system of generalized non-reciprocal and non-discriminatory tariff preferences to developing countries and their preferential treatment in those fields of international economic cooperation where it may be feasible. During the period under review, the eighth session of the United Nations Conference on Trade and Development and follow-up discussions provided new policy guidelines for the future development of the Generalized System of Preferences (GSP). The Cartagena Commitment, in paragraphs 134 to 140, called for a number of specific improvements to the GSP schemes with respect to comprehensive product coverage; minimizing limitations and restrictions on preferential imports; simplification and harmonization of rules of origin; reduction or elimination of non-tariff measures affecting GSP benefits; implementation of the special measures in favour of least developed countries agreed in the Paris Programme of Action for the Least Developed Countries; and, with most-favoured-nation rates brought down by the Uruguay Round, an increase in preference margins and duty-free treatment. The GSP has proved to be a useful instrument of international cooperation for development. In 1992, the preferential imports under all GSP schemes in operation amounted to approximately $80 billion.

C. Flow of resources to developing countries

28. Articles 10, 17 and 22 of the Charter of Economic Rights and Duties of States refer to monetary and financial issues, especially the decision-making process and financial flows.

29. Decision-making on international monetary and financial issues in recent years has continued largely unchanged. Formal decision-making on international

monetary matters still takes place in the International Monetary Fund (IMF), whose membership has become almost universal since the last review of the implementation of the Charter of Economic Rights and Duties of States. Decision-making in the Fund continues to be on the basis of weighted voting. Most international financial activities are undertaken by the private sector. Performance of international financial markets and sources of official financial flows are reviewed regularly in IMF, the World Bank - and their joint ministerial, advisory body on real resource transfers, the Development Committee, as well as in the United Nations (the General Assembly, the Economic and Social Council, the Trade and Development Board and their subsidiary organs and bodies) and in the Development Assistance Committee (DAC) of the Organisation for Economic Cooperation and Development as concerns the official development assistance policies of DAC member countries.

30. There has been insufficient coordination among the major developed countries in their macroeconomic policies. These policies generally have important repercussions on developing countries operating through such channels as the strength of global demand, which is a major influence on the level of commodity prices; the degree of protectionist pressures; the rate of interest on new borrowings and existing debt; and the configuration and volatility of exchange rates. It is widely accepted that much of the disequilibrium at the global level, and the attendant costs for developing countries, might have been attenuated, had international monetary and financial cooperation been strengthened and directed towards improving the external environment surrounding domestic efforts at development and transition.

31. All States are juridically equal and, as equal members of the international community, should have the right to participate fully and effectively in the international decision-making process aimed at solving world economic, financial and monetary problems, inter alia, through the appropriate international organizations, in accordance with the existing and evolving rules, and to share equitably in the benefits resulting therefrom.

32. International cooperation for development is the shared goal and common duty of all States. States should cooperate with the efforts of developing countries and transition economies to accelerate their economic and social development by providing an appropriate and sustainable policy environment and by extending active assistance to them consistent with their development needs and objectives. The financial dimension of this assistance entails both direct provision of financial resources and policy measures to encourage the flow of private resources.

33. The period since the last review of the implementation of the Charter has witnessed a dramatic turnaround in aggregate resource transfers to the developing countries, although the countries with the most difficult economic situations have, for the most part, not shared in it. 5/ In 1989, the developing countries taken together exported $28 billion more in goods and services to other countries than they imported, the surplus being used for net foreign payments on financial account. It is that net cash outflow that comprises the net transfer of resources. In 1990, the developing countries transferred $31 billion abroad; but in the next year the trade balance reversed and the developing countries began to enjoy an import surplus financed by a net

transfer of resources. The net transfer was $33 billion, $44 billion and $54 billion in 1991, 1992 and 1993, respectively.

34. In Africa, however, the net transfer changed from a small inflow of less than $1 billion in 1989 to a small outflow in each of the succeeding years. Because there are several large oil-exporting countries in Africa and because the price of oil has fluctuated considerably since 1989, the aggregate data for the continent do not accurately reflect the situation in the majority of African countries. In sub-Saharan Africa, excluding Nigeria and South Africa, 6/ the net transfer fluctuated in the five years since the last Charter review, ranging from under $6 billion in 1989 to almost $10 billion in 1992 and falling under $9 billion in 1993.

35. The financial components of the net transfers to the developing countries that have changed dramatically are all private flows. 7/ Direct investment and foreign lending - mainly in the form of internationa' bond issues - have increased substantially. In addition, there was a surge in foreign purchases of developing country equity shares, especially in 1993, and a considerable inflow of funds into short-term financial instruments owing to relatively high interest rates and increasing foreign confidence in developing economies. African countries have not participated in the increases in these flows and the official resources on which they heavily rely have barely grown in this period, except for a temporary surge in grants in 1990 associated with the international effort to roll back Iraq's invasion of Kuwait. To a significant extent, this reflects the difficult situation in official development assistance.

36. Aid performance of donor countries was still far from the internationally agreed targets. During the 1980s, official development assistance as a share of GNP for Development Assistance Committee (DAC) donors as a group remained at the level of 0.34 per cent; it dropped slightly in 1991 and 1992 to 0.33 per cent. Such levels of aid are clearly below the 0.7 per cent target set by the United Nations, although certain countries have been able to exceed the target on a regular basis (Denmark, the Netherlands, Norway and Sweden), while others are close to it (Finland and France). Moreover, while the aid programmes of the transition economies have had to be drastically curtailed, Arab programmes of cooperation with other developing countries remain very substantial, particularly those of Kuwait, Saudi Arabia and the United Arab Emirates. The tight fiscal constraints in donor countries are seriously limiting the prospects of their increasing official development assistance substantially.

37. At the Second United Nations Conference on the Least Developed Countries in 1990, donors committed themselves to a significant and substantial increase in resource flows to least developed countries in order to reach more rapidly the target share of official development assistance of 0.15 per cent of GNP for these countries and also to incorporate the new target of 0.20 per cent. However, in 1992, total official development assistance of DAC countries to least development countries remained at a level of 0.09 per cent.

38. The foreign debt situation of many developing countries and several transition economies has severely hampered their economic growth and adjustment efforts and blocked the access of most of these countries to new sources of foreign financing. For the countries in which the debt-servicing burden

exceeded what the economy could sustain, debt crises ensued and arrears accumulated. The international community responded with an international debt strategy that evolved as it came to be realized that deeper debt and debt-service reductions were needed. Although considerable progress has been made, there is still a lot to be done, especially as regards the debt of many African countries.

39. Within the period under review, the Brady Plan, introduced in 1989, became the standard approach to restructuring debt owed to commercial bank creditors. Before the Brady Plan, debt-servicing obligations were mainly postponed in debt-rescheduling agreements under which banks also made "concerted" new loans to help pay arrears. The new approach sought to end the cycle of reschedulings. It encompassed a menu of options by which banks would exchange most of their claims for others with smaller net present values, albeit with certain risk-reducing changes that were paid for in part with new multilateral loans. As of mid-1994, 10 countries restructured their commercial-bank debt (or reached preliminary agreement to do so) using the Brady approach, although the largest agreement, that for Brazil in 1994, was completed without any special foreign official support. These debt restructurings and individual country buy-backs of debt (in part using grants for that purpose from donor Governments) have generally led to modest net reductions in debt. However, their major importance seems to be that they provide an orderly framework for settling claims. Along with considerable progress in domestic adjustment in most countries, this has increased investor perceptions of the creditworthiness of the debtor economies.

40. Most of the debt owed to foreign Governments is restructured in the Paris Club, an informal gathering of official creditors that meets in the French Treasury. Until December 1991, the only generally available treatment for non-concessional debt servicing was to reschedule the payments due, albeit on terms that had been lengthened over the years. Full interest charges continued to be assessed on the outstanding balances. The new treatment, called the "enhanced Toronto terms", made it possible to halve the present value of the scheduled debt servicing during a fixed period (the "consolidation" period). The Paris Club also agreed to consider in the future the question of reducing the stock of debt itself. These terms were accorded only to the lowest-income developing countries undergoing rigorous adjustment programmes and followed by a year the exceptional terms of relief accorded to two middle-income countries owing to unusual political circumstances. In 1993 and 1994, the Paris Club became increasingly flexible in debt restructuring, as there has been a wide perception that its terms were in several instances inadequate and left some debtor countries with an unsustainable debt burden (the "debt overhang"). While certain Governments have unilaterally offered better terms, in certain cases cancelling some debt, lack of consensus has prevented a further enhancement of Paris Club terms and is one widely recognized arena of "unfinished business" in the international debt strategy.

41. A third important class of foreign debt of developing countries is that owed to multilateral institutions. Obligations to these institutions are never restructured, although in 1989 the World Bank established a special facility (the "Fifth Dimension" of the International Development Association) that for certain countries refinances non-concessional debt servicing on a concessional basis. 8/ In any event, some countries find that they cannot always fully

service their multilateral debt. The largest arrears have been those owed to IMF, and they are perhaps also the most important since they preclude having an internationally supported adjustment arrangement with the Fund. Thus, in 1990, IMF began a "strengthened cooperative strategy" to help countries remove their arrears, and with bilateral financial assistance and rigorous adjustment by the indebted countries, seven countries have been brought back to normal status. This notwithstanding, as of the end of January 1994, 10 countries had $3.8 billion in arrears to the Fund. Besides these countries, others are only prevented from slipping into arrears to multilateral institutions by continued cash flow from these institutions and donor Governments. Some of these countries thus have a severe debt overhang and it is unclear that it could be removed in all cases by restructuring their debt if the debt owed to the multilateral institutions still had to be excluded. 9/ Solving this problem while maintaining the preferred creditor status of the multilateral institutions is another part of the unfinished business of the international debt strategy.

D. Needs of specific groups of countries and specific sectoral activities

42. The Second United Nations Conference on Least Developed Countries, held in Paris in 1990, unanimously adopted the Programme of Action for the Least Developed Countries for the 1990s. 10/ This programme represents a comprehensive statement of strategy and policy aiming to revitalize the growth and development of least developed countries, based on the principle of shared responsibility and strengthened partnership between least developed countries and their development partners. It contains a global framework with the following broad elements: macroeconomic framework; external trade; strengthening economic and technical cooperation between least developed countries and other developing countries. In the area of sectoral policies and measures, the Programme of Action includes agreed actions in two broad areas: mobilizing and developing human capacities in the least developed countries; and development, particularly expansion and modernization of the economic base. A major feature of the Programme of Action is its recognition that development should centre on human welfare, should be broadly based and should take into account long-term concerns. The Programme of Action provides for an intergovernmental follow-up mechanism.

43. The Programme of Action for the Least Developed Countries for the 1990s, and other United Nations programmes contain specific provisions to address the problems of land-locked countries. The envisaged measures relate, inter alia, to the right of access of land-locked countries to and from the sea and freedom of transit; the need to strengthen further cooperative efforts in dealing with their transit problems; and the need to provide financial and technical assistance to those countries to enable them to undertake the construction, maintenance and improvement of transit transport facilities.

44. In furtherance of the needs of particular groups of countries (see Charter, art. 25), the Committee for Development Planning revised the criteria for identifying least developed countries and recommended modifying the list accordingly. The General Assembly took action on those recommendations by adopting resolution 46/206 on 20 December 1991. The process now involves a

triennial review and includes criterion for both the inclusion of countries on the list of least developed countries and their graduation from it.

45. With regard to the special problems of island developing countries and in follow-up to the United Nations Conference on Environment and Development, the Global Conference on the Sustainable Development of Small Island Developing States was held in Barbados from 25 April to 6 May 1994. It resulted in the adoption of a Programme of Action for the Sustainable Development of Small Island Developing States and the Barbados Declaration. The Programme of Action, the major outcome, is based on an explicit recognition of the peculiar characteristics of Small Island Developing States, notably their fragility and extreme vulnerability to natural disasters and international economic shocks. It consists of 15 major chapters, the first 14 of which deal with issues relating to 14 substantive sectors identified as priority areas for the sustainable development of Small Island Developing States, and the last with the modalities and means of implementation, monitoring and review of the programme.

46. The implementation of the Programme of Action is predicated on partnerships at the national, regional and international levels. At the national level, in addition to sound economic and environmental policies and measures, it stresses the need for partnership between national Governments and the people they serve, including the need for participation in decision-making by all major groups in society. At the regional level, it stresses the benefits of economies of scale and greater effectiveness from cooperation among small island developing States in areas of common interest to them. The Programme of Action recognizes that the efforts of small island developing States at the national and regional levels need to be supplemented through international cooperation if small island developing States are to proceed on a sustainable development path. In this respect, the United Nations system is called upon to play a major role. The major areas in which international cooperation are seen to be necessary are finance, human resources development, institution building, international trade and environmentally sound technologies.

47. Economic cooperation among developing countries and regional economic integration have been salient features of recent international cooperation. In recent years, the former has included a number of specific cooperative initiatives in utilizing and exploiting natural resources shared by two or more developing countries. Regional and subregional cooperation or integration groupings have gained in dynamism in the early 1990s, after a period of stagnation during the 1980s. Most of the recent initiatives are aimed at strengthening and consolidating the market integration process through the formation of free trade areas, custom unions and common markets. Notable successes have been scored in these areas, especially in Latin America.

48. The Agreement on the Global System of Trade Preferences among Developing Countries (GSTP), which is considered a cornerstone of economic cooperation among developing countries, was established as a framework for the exchange of trade concessions among developing countries and entered into force on 19 April 1989 among 40 countries which ratified the Agreement. In November 1991, GSTP Ministers concluded the second round of negotiations with the aim of facilitating the process of accession to the Global System of Trade Preferences among Developing Countries and carrying forward the exchange of

concessions and stipulated that the negotiations should be concluded in principle no later than July 1994. These integration processes have been supported through technical and financial assistance. The mechanisms for such specific assistance need to be further refined in order to attract adequate levels of assistance.

49. The work in devising legal regimes to govern the activities of transnational corporations and the discussion of issues related to foreign direct investment has been pursued. The most comprehensive effort to create a global and balanced framework for foreign direct investment, the draft code of conduct on transnational corporations, has not been successful; no consensus has been reached despite 15 years of negotiation. A new approach will be undertaken that will include the preparation of guidelines and/or any other international instruments on foreign direct investments.

50. The draft international code of conduct on the transfer of technology has not been concluded either. A recent study 11/ suggested that, in the light of the important changes in the area of technology since the beginning of the negotiations on the draft code of conduct in 1978, it should, notwithstanding its continued relevance and utility, be adapted to these changes. To this end, in 1991, it was agreed, in principle, to establish an intergovernmental group of experts in UNCTAD to prepare the groundwork for the resumption of negotiations. However, the divergence of views on the treatment of restrictive practices in transfer of technology transactions and on the applicable law has remained the main obstacle to a full agreement. Efforts still have to be made in order to facilitate agreement on all outstanding issues in the draft code.

51. These trends indicate a mixed picture in the implementation of the provisions of the Charter on Economic Rights and Duties of States with regard to specific country groups and sectoral activities. Given the changing circumstances, partial progress has been made, while much remains to be done.

E. Progressive development of the principles and norms of international law relating to international economic relations

52. Following the adoption of the Charter of Economic Rights and Duties of States in 1974, the General Assembly considered that the preparation of a set of legal norms and principles on international economic cooperation might facilitate the Charter's implementation. The approach to be followed in identifying the legal norms and principles, however, became problematic. To facilitate its work, the Assembly requested the Secretary-General, in collaboration with the United Nations Institute for Training and Research (UNITAR) and in coordination with the United Nations Commission on International Trade Law, to study the principles and norms which could be embodied in one or more legal instruments. The Secretary-General submitted a report on the subject in 1980. Thereafter the Assembly requested UNITAR to prepare a list of the existing and evolving principles and norms of international law relating to the new international economic order concerning the economic relations among States, international organizations and other entities of public international law, and the activities of transnational corporations and to prepare an analytical study

on the basis of the list. The study prepared by UNITAR was submitted by the Secretary-General to the Assembly at its thirty-ninth session, in 1984.

53. From 1984 on, the General Assembly, in dealing with the subject, largely constrained itself to inviting Member States to submit their views on the issues involved, in order to seek the most appropriate action to be taken and the procedures to be adopted in the consideration of the report prepared by UNITAR. At its forty-sixth session, in 1991, the Assembly decided that a working group of its Sixth (legal) Committee would be established at the forty-eighth session, in 1993, to develop the principles and norms in question. The Assembly also called upon the Secretary-General to request Member States and competent international organizations to formulate their comments, in particular on the principles that they thought might be given priority attention by the working group.

54. The working group met during the forty-eighth session of the General Assembly. On the basis of an oral report by the Chairman of the working group and the recommendation of the Sixth Committee, the General Assembly decided to defer consideration of the item to its fifty-first session in 1996, in order to give time to States and international organizations to reflect on a new possible approach to the topic and consider the possibility of preparing a new document as a basis for further discussion. It was generally felt by Member States that the possibility of refocusing the subject on international economic cooperation and development should be explored.

55. The progressive development of principles and norms of international economic law remains an essential but still somewhat controversial subject. Further efforts have to be focused on reconciling the still existing divergence of views. The focus should, as proposed, be on such norms and principles of international economic law that are most relevant for international development cooperation based on the imperatives of mutuality of interests and benefits.

56. The Charter of Economic Rights and Duties of States also touches upon a number of the main principles contained in the United Nations Convention on the Law of the Sea. 12/ In particular, the Charter, in its article 29 recognizes the common heritage principle, which is a major underpinning of the Convention. Further, the Charter contains two of the more important principles reflected in the Convention, namely the preservation and protection of the environment (art. 30) and the transfer of technology in the context of international scientific and technological cooperation (art. 13). Analysis of the progress achieved through the Convention on the Law of the Sea in further developing the relevant provisions of the Charter is outlined below.

57. The Convention embodies and gives effect to the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction adopted by the General Assembly on 17 December 1970 (resolution 2749 (XXV)), which spelled out the common heritage precept by declaring that the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, are the common heritage of mankind and shall not be subject to appropriation by any means by States or persons. Legal effect is given to the common heritage principle by obligating all parties to the Convention on the Law

of the Sea to recognize the international seabed area (the Area) beyond the limits of national jurisdiction and its resources as the common heritage of mankind (art. 136). The Convention places a general responsibility on States to ensure that their conduct in relation to the common heritage area shall be in accordance with its provisions, the principles embodied in the Charter of the United Nations and other rules of international law.

58. With respect to the resources of the Area, the Convention declares that "activities in the area shall ... be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or landlocked, and taking into particular consideration the interests and needs of developing States" (art. 140, para. 1). It stipulates that "no State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof" (art. 137, para. 1). Rights to the resources of the common heritage Area are vested by the Convention in mankind as a whole, on whose behalf the International Seabed Authority shall act. The Convention further stipulates that these resources are not subject to alienation, and that the minerals recovered from the Area may only be alienated in accordance with the provision of the Convention and the rules, regulations and procedures of the Authority (art. 137, para. 2). The United Nations Convention on the Law of the Sea reserves the Area for "use exclusively for peaceful purposes by all States, whether coastal or landlocked, without discrimination" (art. 141).

59. With regard to the international regime, the Convention establishes the International Seabed Authority open to membership by all States as well as international organizations and other entities meeting specified criteria. 13/ The Convention itself has gained overwhelming acceptance by the international community. It was signed by 159 States. Already, it has 61 parties and will enter into force on 16 November 1994. However, a number of countries, including a majority of industrialized countries, have not become parties to it owing to expressed difficulties with its seabed mining provisions, as contained in part XI. In order to ensure universal support for the Convention, the Secretary-General has convened a number of rounds of informal consultations on outstanding issues relating to the deep seabed mining provisions of the Convention. It is hoped that these consultations will lead to a successful conclusion in the near future.

60. Moreover, the Convention establishes the general principles and policies governing prevention, reduction and control of pollution throughout the marine environment. It spells out the specific rights and duties of States concerned for the realization of their ecological goals. The primary obligation to protect and preserve the marine environment is placed on States (art. 192). States are obligated to adopt measures to prevent, reduce and control pollution of the marine environment, and to provide technical and scientific assistance to developing States in that regard (arts. 194 and 202).

61. Furthermore, the United Nations Convention on the Law of the Sea contains a number of provisions intended to foster the development and facilitate the transfer of marine technology and to encourage the conduct of marine scientific research. The implementation of those provisions depends upon the establishment of adequate safeguards for the holders of the rights concerned. In pursuance of

this objective, the Convention directs that States should promote the development of the marine scientific and technological capacity of States that may need and request technical assistance, particularly developing States, with regard to the exploration, exploitation, conservation and management of marine resources, the protection and preservation of the marine environment, marine scientific research and other activities in the marine environment (art. 266). The Convention balances this obligation with a direct call on States to have due regard for all legitimate interests, including the rights and duties of holders, suppliers and recipients of marine technology (art. 267).

F. Disarmament and development

62. Article 15 of the Charter of Economic Rights and Duties of States stresses the importance of the utilization of resources released by effective disarmament measures for the economic and social development and the allocation of a substantial portion of such resources as additional means to meet the development needs of developing countries. The International Conference on the Relationship between Disarmament and Development, held in 1987, established a comprehensive mandate for the United Nations in this area. 14/ The activities undertaken in implementation of that mandate are described in five successive reports of the Secretary-General to the General Assembly beginning in 1989. 15/

63. The United Nations is currently challenged to respond to the process of military and economic adjustments to the post-cold-war world. The world now seems poised for an increasing availability of resources hitherto devoted to military ends. Cuts in the military spending of major military powers have already occurred. Entire categories of weapons systems have been either eliminated or banned through negotiated agreements. In addition, the very rationale for continuing arms accumulation is being called into question. The redeployment, redirection or conversion of military and related resources into non-military uses, however, has proven more difficult than was previously imagined. National experiences have varied, notably as a result of differences in the relative technological sophistication of their civilian and military sectors, pent-up demand for civilian goods and general economic conditions. There is, nonetheless, a broadly shared recognition that the transition from a cold-war to a post-cold-war situation will be eased in a more stable and robust global economy. 16/

64. The United Nations is frequently being asked to assist in this process, both directly, through facilitating economic adjustments within States, and indirectly, through analysis of macro- and microeconomic issues related to conversion, as well as through stimulating faster progress on global development issues. The United Nations is taking some modest steps to adjust its work to the post-cold-war military and economic realities. Special intra-secretariat and inter-agency arrangements have been made to ensure a comprehensive approach to the different dimensions of this important subject, which involves political, military and economic factors.

G. Elimination of colonialism, apartheid and racial discrimination

65. In proclaiming that "it is the right and duty of all States, individually and collectively, to eliminate colonialism", article 16, paragraph 1 of the Charter of Economic Rights and Duties of States can be considered a reaffirmation of principles that, since its inception, have consistently guided the activities of the United Nations in the field of decolonization. During the five years under review, the General Assembly has confirmed the determination of the Organization to carry out its responsibilities in this regard until the last vestiges of colonialism are eradicated.

66. Similarly, the idea articulated in article 16, paragraph 2, of the Charter that "no State has the right to promote or encourage investments that may constitute an obstacle to the liberation of a territory occupied by force" has consistently been reflected in the agenda of the General Assembly. However, article 16, has been and continues to be an object of some controversy.

67. During the five years under review, one of the main colonial problems - the question of Namibia - was resolved. During the same period, the Security Council terminated the Trusteeship Agreement in respect of three of the four entities comprising the Trust Territory of the Pacific Islands. Those events have brought the decolonization process closer to completion. Furthermore, the actions recommended by the General Assembly in its resolution 46/181 of 19 December 1991, by which it adopted the Plan of Action for the International Decade for the Eradication of Colonialism, are expected to contribute to the complete elimination of colonialism by the year 2000 and should, therefore, respond to the concerns of article 16.

68. Most recently, crucial steps were taken, with the full support of the United Nations, towards the final dismantling of apartheid in South Africa. The first all-race multi-party election, held in April 1994, lead to the establishment of a united, democratic, non-racial Government of South Africa, which was inaugurated on 10 May 1994. Pursuant to those welcome developments, referred to, in particular, in a letter dated 18 May 1994 from President Nelson Mandela of the Republic of South Africa to the President of the Security Council, 17/ the Security Council, by its resolution 919 (1994) of 25 May 1994, decided to terminate forthwith the mandatory arms embargo and other restrictions related to South Africa. Currently, there is an urgent need to facilitate the process of reintegration of South Africa in the international community, including the United Nations system, as well as the global economy.

69. In another major development relevant to the provisions of article 16 of the Charter, the Israeli-Palestinian peace talks resulted in the signing of the Declaration of Principles on Interim Self-Government Arrangements, in September 1993, in Washington, D.C. (A/48/486-S/26560), and of the follow-up agreement on the Gaza Strip and Jericho, in May 1994, at Cairo. These and other recent accords represent important steps towards achieving a comprehensive, just and lasting settlement in the Middle East, and economic and social development in the occupied territories. In furthering its long-standing support for these processes, the United Nations is currently undertaking efforts, through the Secretary-General's Special Coordinator, to enhance the delivery and

coordination of the assistance provided by its programmes and agencies to the Palestinians in the occupied territories, on the basis of an integrated and unified approach.

IV. CONCLUSIONS

70. The creation and implementation of generally accepted norms and principles guiding international economic relations is an incremental process. This process requires continuing efforts and permanent adaptation to changing circumstances and conditions. The legal principles and norms of the Charter of Economic Rights and Duties of States were formulated as the orientation for the legal underpinning of an envisaged new international economic order based on the imperatives of growing interdependence, increasing importance of multilateral approaches, mutual interests and benefits and shared responsibilities. The Charter of Economic Rights and Duties of States is far-reaching in its conception and scope of application. The Charter was initiated by the developing countries based on the perceived need to restructure international economic relations on the basis of greater equality and the recognition of their specific needs. This approach created some degree of controversy, and the Charter was adopted by a divided vote. Some of the stated principles continue to arouse controversy, although a large part of it is generally acceptable and does not generate any particular contention. The need to adapt the basic framework to changing circumstances and perceptions is undisputed, but, in a general sense, the objectives and principles of the Charter remain valid.

71. The commitment to cooperation and partnership for development, which has been evolving in various forms in recent years, constitutes vivid evidence of the relevance of the basic principles enunciated in the Charter of Economic Rights and Duties of States. This is manifested in several documents, especially the Declaration on International Economic Cooperation, in particular the Revitalization of Economic Growth and Development of the Developing Countries; the International Development Strategy for the Fourth United Nations Development Decade; the Declaration on the Right to Development (General Assembly resolution 41/128 of 4 December 1986, annex); the United Nations New Agenda for the Development of Africa in the 1990s; the Programme of Action for the Least Developed Countries for the 1990s; the Cartagena Commitment; Agenda 21 and the Rio Declaration on Environment and Development; and the successful conclusion of the Uruguay Round of GATT multilateral trade negotiations. These basic documents build, to a certain degree, on the objectives and principles stipulated in the Charter of Economic Rights and Duties of States and form the overall framework for international economic cooperation in the 1990s. Their common basic objective is the integration of developing countries and countries in transition into the world economy and the existing international economic regimes.

72. The progress achieved in forming consensus on some of the basic principles of international economic cooperation can legitimately be considered a step towards further adaptation and implementation of the Charter of Economic Rights and Duties of States. This process includes the adaptation of some principles and norms to the progressive development of new paradigms and perceptions. The new approaches relate, inter alia, to the growing emphasis on sound national

economic policies, the need for structural adjustments, the importance of human resources development, the recognition of ecologically sustainable development, the growing trend concerning the use of market mechanisms and trade liberalization policies, the developmental role of foreign direct investments and the need to foster a more conducive international economic environment.

73. Despite the registered progress in shaping international economic relations based on agreed principles and norms, further efforts are needed to ensure that the legitimate interests of all actors in the international economic scene are adequately taken into account and that innovative solutions are applied to address still existing inequalities as well as new emerging problems related to the growing globalization of economic activities. This includes further efforts to facilitate adequate financial flows, in all forms, to improve market access for the exports of developing and transition economies, to assist developing countries in structural transformation and export diversification efforts, to improve the framework for international technology transfers and to address the specific needs of the least developed countries.

74. The progressive development of legal norms and frameworks will have to be continued in order to create an adequate legal basis for the new system of international economic relations. With the end of the cold war and of the ideological divide, ensuing disarmament measures and reductions in military expenditures have still to be translated into tangible instruments for utilizing the released resources for economic and social development, in particular, development assistance.

75. Increased interdependence and corresponding requirements for multilateral approaches based on mutual benefits and shared responsibilities have emerged with growing urgency and have been met, at least partially, by new international arrangements. By and large, the basic objectives and principles laid out in the Charter of Economic Rights and Duties of States have proved their relevance and validity. Yet, new paradigms of development require new considerations to further improve and adapt the instrumentality of the Charter.

Notes

1/ Official Records of the General Assembly, Fortieth Session, Supplement No. 52 (A/40/52).

2/ See Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I, Resolutions adopted by the Conference.

3/ General Agreement on Tariffs and Trade, An Analysis of the Proposed Uruguay Round Agreement, with Particular Emphasis on Aspects of Interest to Developing Countries (MTN.TNC/w/122, MTN.GNG/w/30 and corrigendum) November 1993.

4/ "A New Partnership for Development: The Cartagena Commitment"; see Proceedings of the United Nations Conference on Trade and Development, Eighth Session, Report and Annexes (TD/364/Rev.1) (United Nations publication, Sales No. E.93.II.D.5), part one, sect. A.

5/ For additional details see World Economic and Social Survey 1994 (United Nations publication, Sales No. E.94.II.C.1), chap. IV.

6/ South Africa, of course, is not an oil-exporting country, but until 1993 it was international policy, in effect, to try to bring about a negative transfer in that country as part of the global struggle against apartheid (see World Economic and Social Survey 1994 ..., box IV.1).

7/ For additional details on the flows, see World Economic and Social Survey 1994 ....

8/ See World Bank, World Debt Tables, 1993-94 (Washington, D.C., December 1993), vol. I, p. 40.

9/ The World Bank, in its annual publication, World Debt Tables, 1992-93 (Washington D.C., December 1992), pp. 7-10, identified the severely indebted low-income countries that would still have unsustainable debt burdens even after their Paris Club debt were rescheduled on "Trinidad terms" and all official development assistance debts were cancelled.

10/ See Report of the Second United Nations Conference on the Least Developed Countries, Paris, 3-14 September 1990 (A/CONF.147/18), part one.

11/ TD/CODE/TOT/55.

12/ Official Records of the Third United Nations Conference on the Law of the Sea, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122.

13/ Parties to the Convention are ipso facto members of the Authority in accordance with article 156 of the Convention.

14/ See General Assembly resolutions 42/45 and 43/75 B.

15/ A/44/449, A/45/592, A/46/527, A/47/452 and A/48/400.

16/ See World Economic Survey 1992 (United Nations publication, Sales No. E.92.II.C.1 and corrigenda), chap. VI.

17/ S/1994/606.

ANNEX

Summary of replies by Member States

1. Pursuant to General Assembly resolution 44/170 of 19 December 1989, the Secretary-General on 25 March 1994 addressed to the Permanent Representatives of all Member States a note verbale requesting them to communicate to him information on any concrete steps and measures taken since the last review in 1989 to implement the Charter of Economic Rights and Duties of States. As of 1 June 1994, four countries, namely, Iraq, Japan, Jordan and Monaco, had replied to the note verbale. Summaries of the main substantive features of the replies received are outlined below.

Iraq

2. Iraq refers to its active participation in the elaboration of the Charter of Economic Rights and Duties of States and subsequent efforts, at various international forums, aimed at the realization of its provisions. It stresses the importance of paragraph 2 of General Assembly resolution 44/170, which reaffirms the right of every country to adopt, without external interference, the economic and social system that it deems most appropriate for its own development. It further affirms its beliefs in the following: (a) developing countries must exercise their right to full and effective sovereignty over their natural resources and economic activity; (b) the need to improve the terms of trade of the developing countries in order to preserve the purchasing power of export revenues; (c) the advanced industrialized countries should control inflation and its spread to developing countries; (d) the need to eliminate customs barriers and other impediments to the exports of developing countries; and (e) the necessity to reform the international monetary system and to provide financial and technical assistance to the developing countries.

Japan

3. The Government of Japan states that the Charter of Economic Rights and Duties of States contains internal contradictions. While recognizing the permanent sovereignty over natural resources and the sovereign right to expropriation, it fails to limit the practice of arbitrary or discriminatory expropriation of foreign investment or to identify a rationale for such action that is in conformity with international law. Japan expresses the view that the review of the Charter should be discontinued or postponed. Japan welcomes the adoption of General Assembly resolution 48/165 of 21 December 1993, entitled "Renewal of the dialogue on strengthening international economic cooperation for development through partnership", whose goals it hopes will be achieved.

Jordan

4. Jordan submitted three reports on the obstacles facing its economy and the steps taken to reactivate its economic growth and development. First, the report entitled "Jordan: economic development and adjustment efforts" describes the main features of the country's adjustment programme initiated in 1989, the economic trends prevailing in 1992-1993 and the plan for economic and social

development for the period from 1993 to 1997. The plan includes the statement of a number of objectives and basic principles, as well as the description of fiscal, monetary, social and other sectoral policies of the Government of Jordan. Secondly, the submission contains two memorandums from the Ministry of Finance of Jordan: an "economic memorandum" dated September 1993; and a "memorandum on the Jordanian economy and the implementation of United Nations sanctions concerning the Gulf crisis" dated January 1994. The latter, which was submitted to the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, details the losses incurred by Jordan as a result of the Gulf crisis, including costs of implementing sanctions imposed on Iraq, which are estimated, in total, at US$ 9 billion. The third document, entitled "Jordan's medium-term adjustment programme in cooperation with the International Monetary Fund and the World Bank", describes the progress in restoring growth and reducing macroeconomic imbalances in 1992-1993, but also stresses the major challenges that the country continues to face, namely, unemployment, poverty and the debt overhang. It underlines Jordan's determination to accelerate structural reforms and to continue macroeconomic adjustments, with the necessary support of adequate external financing.

Monaco

5. The Principality of Monaco indicates that pursuant to the United Nations Conference on Environment and Development it has intensified, mainly on the bilateral level, its cooperation with developing countries and countries with economies in transition in the areas of environmental protection and resources for development. Specific examples of such cooperation are outlined in the submission. Monaco has recently launched two projects relating to: (a) monitoring of the quality of the environment in Tunisia (studies on marine environment for Zembra National Park and on the quality of purified water for reuse in agriculture); and (b) a feasibility study on a garbage-processing plant in the Chouf region in Lebanon (conversion of wastes into energy). In accordance with an agreement with Bulgaria, a third project has been initiated to finance a study on a management and development plan for the coastal zone located at the mouths of Veleka and Rezovska rivers, near the border with Turkey. In the light of the study's conclusions, Monaco contemplates financing the development of infrastructure that would facilitate scientific research and "ecological tourism" in the zone. Monaco reaffirms its commitment to international cooperation for sustainable development in the Mediterranean and the Black Sea region.